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FEDERAL COMMUNICATIONS COMMISSION

47 CFR 20

[WT Docket Nos. 07-250, 10-254: DA 14-1688]

Request For Updated Information and Comment on Wireless Hearing Aid Compatibility Regulations.

ACTION: Proposed Rule.

SUMMARY: In this document, the Wireless Telecommunications Bureau and the Consumer and Governmental Affairs Bureau seek updated input to better understand the current consumer experience, to explore technical or other barriers to the provision of hearing aid compatible devices on new wireless technologies, and to consider changes to its rules that may be necessary to ensure that wireless handsets used with advanced communications services are accessible in light of directives contained in the Twenty-First Century Communications and Video Accessibility Act (CVAA).

DATES: Effective 30 days from publication in the Federal Register. Reply Comments 45 days from publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Eli Johnson, Wireless Telecommunications Bureau, (202) 418-1395, email Eli.Johnson@fcc.gov. Bob Aldrich, Consumer and Governmental Affairs Bureau, (202) 418-0996, email Robert.Aldrich@fcc.gov

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, WT Docket Nos. 07-250, 10-254, released November 21, 2014. The full text of this

document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554; the contractor's Website, <http://www.bcpiweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or email FCC@BCPIWEB.com. Copies of the Public Notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 07-250; 10-254. Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

I. INTRODUCTION

1. By this Public Notice, the Wireless Telecommunications Bureau (Wireless Bureau) and the Consumer and Governmental Affairs Bureau (CGB) request updated information to assess whether the Commission's hearing aid compatibility rules for wireless handsets effectively meet the needs of individuals who are deaf and hard of hearing. Since the Wireless Bureau last developed the record on these issues in 2012, a number of developments have occurred, including the deployment of LTE networks and LTE only handsets, wider use of and reliance on Wi-Fi calling, increasing consumer demand for data-centric mobile services on wireless devices, and continued growth in the number of wireless-only households.

2. The Wireless Bureau and CGB therefore seek updated information to better understand the current consumer experience, to explore technical or other barriers to the provision of hearing aid compatible devices on new wireless technologies, and to consider recommending changes to the Commission's rules that may be necessary to ensure that wireless handsets used with advanced communications services are accessible in light of directives contained in the Twenty-First Century

Communications and Video Accessibility Act (CVAA) (CVAA, Pub. L. 111-260). The Commission seeks to refresh the record on two principal issues. First, should the Commission revise the hearing aid compatibility requirement to apply in a technologically neutral way to all mobile wireless devices that can be used for voice communications? Second, should the Commission consider moving away from the fractional compliance regime that exists today and implement a requirement that all mobile wireless devices must comply with the hearing aid compatibility rules?

II. BACKGROUND

3. In 2003, the Commission adopted rules to ensure that all wireless handset manufacturers and service providers offer consumers a selection of handsets that are compatible with hearing aids. Under these rules, which were amended in 2008, manufacturers and wireless service providers are currently required to meet the Commission's wireless hearing aid compatibility standards only to the extent that handsets are associated with digital CMRS networks that "offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls." These rules require mobile service providers and handset manufacturers to offer only a certain number of digital wireless handset models that are hearing aid compatible through reductions in radio frequency (RF) interference and through an internal capacity for inductive coupling with a telecoil.

4. In the 2007 Hearing Aid Compatibility NPRM, (22 FR 292, November 7, 2007) the Commission sought comment on whether to apply the hearing aid compatibility rules to wireless handsets that may fall outside the scope of covered CMRS, including handsets that offer voice services on non-cellular unlicensed Wi-Fi networks. In the 2010 Further NPRM, (75 FR 77781, December 14, 2010) the Commission proposed to apply hearing aid compatibility requirements to "all customer equipment used to provide wireless voice communications over any type of network among members of the public or a substantial portion of the public via a built-in speaker where the equipment is typically held to the ear, so

long as meeting hearing aid compatibility standards is technologically feasible and would not increase costs to an extent that would preclude successful marketing.”

5. Subsequent to the release of the 2010 Further NPRM, the CVAA amended the Hearing Aid Compatibility Act (HAC Act)(HAC Act, Pub. L. 100-394) in several relevant respects. First, the CVAA defined the class of equipment that is generally required to be hearing aid compatible to include, in addition to telephones, “all customer premises equipment used with advanced communications services that is designed to provide 2-way voice communication via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone.” The CVAA defines “[a]dvanced communications services” to include, among other things, interconnected and non-interconnected VoIP services. Second, the CVAA defines “telephones” for purposes of the public mobile and private radio services exemptions to include “telephones and other customer premises equipment used in whole or in part with” various wireless communications services, including unlicensed services that are functionally equivalent to licensed services. Third, Congress directed the Commission to reassess the appropriateness of existing exemptions using a four-part test. Finally, in implementing the hearing aid compatibility requirements applicable to customer premises equipment (CPE) used with advanced communications services, Congress directed the Commission to “use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users.”

6. Shortly after passage of the CVAA, the Wireless Bureau released a Public Notice seeking comments on the effect that the new legislation might have, if any, on the hearing aid compatibility rules that had been proposed in the 2010 Further NPRM. In December 2010, the Wireless Bureau issued a second Public Notice to initiate a comprehensive review of the wireless hearing aid compatibility regulations (2010 Review PN), (76 FR 2625, December 28, 2010) including reassessment of deployment benchmarks and consideration of whether all wireless handsets should be required to meet hearing aid

compatibility standards. Subsequently, in November 2012, due to intervening market, technical, and regulatory developments since the 2010 Review PN, the Wireless Bureau sought updated and additional comment on these matters (2012 Refresh PN), (77 FR 70407, November 26, 2012).

III. REQUEST FOR COMMENT

A. Applying the Rules in a Technologically Neutral Manner

7. section 20.19 of the Commission's rules currently imposes hearing aid compatibility requirements based on the underlying network technology, not on a device's functionality. Consumers, however, may focus more on a particular handset's functionality than on the network technology that it utilizes. Additionally, a technologically neutral approach may encourage innovation in the design of hearing aid compatible mobile wireless devices. The Wireless Bureau and CGB renew the Commission's request for comment on whether to require compatibility in a technologically neutral manner.

8. To keep pace with consumer expectations and the evolution of wireless technologies, the Wireless Bureau and CGB seek comment on whether consumers are aware that the hearing aid compatibility rules currently apply only to digital CMRS services with certain functionalities and, relatedly, whether section 20.19 should apply to all wireless handsets, regardless of the service, frequency, or technology with which they are used. In other words, if a wireless handset includes a built-in speaker and is typically held to the ear in a manner functionally equivalent to a telephone, then should the hearing aid compatibility requirements apply? If the Commission were to take this course of action, how should it define "functionally equivalent"? What would be the costs and benefits of revising section 20.19 along these lines -- for handset manufacturers, service providers, hearing aid manufacturers, and consumers? The Wireless Bureau and CGB seek comment on whether this approach would be more consistent with consumer expectations, especially the expectations of persons with hearing loss, and if so, why.

9. The Wireless Bureau and CGB note that amended rules could cover, among other things, handsets that operate over Wi-Fi systems and private internal networks. In light of this potential scope, the Wireless Bureau and CGB seek comment on whether the Commission should consider applying the hearing aid compatibility rules to handsets and other CPE used for wireless voice communications regardless of whether they are interconnected with the public switched telephone network (PSTN). Similarly, should the rules apply to other packet-based modes of voice access such as Voice over LTE (VoLTE) that may not use an in-network switching facility? How would amending the hearing aid compatibility rules in this manner affect a consumer's ability to use his or her device in a variety of situations, such as for communicating in a moving vehicle (which requires access to multiple base stations), in a Wi-Fi hot-spot, or through a satellite? Additionally, should the Commission expand the hearing aid compatibility rules to include handsets and CPE used solely over internal networks?

10. The CVAA directs the Commission to consider technical feasibility, marketability, and the availability of new technologies in connection with its hearing aid compatibility rules. Thus, the Wireless Bureau and CGB seek comment on how difficult it would be for handsets that offer voice communication capability but may not presently be subject to section 20.19 to comply with a hearing aid compatibility technical standard, and whether devices used primarily or exclusively on internal networks pose unique technical challenges. Could manufacturers and service providers achieve compliance for these devices in a relatively short period of time? Are there technical impediments or other considerations of which the Commission should be aware? If there are technical impediments or other considerations, what are they and how long would it take for manufacturers and service providers to overcome them? How much lead time would manufacturers need in order to come into compliance and what would be the costs of complying?

11. Along these same lines, do testing laboratories have the equipment and software needed to test the compatibility of handsets that offer voice communication capability but may not be presently

subject to section 20.19? Could laboratories upgrade existing equipment to test devices that operate on other interfaces, or would they need to purchase new equipment and software? What are the costs of updating existing equipment and software or purchasing new equipment and software?

12. Would technical impediments, testing costs, or other challenges support exempting certain technologies or services from the rules, either indefinitely or for a specified period? If so, what technologies or services would merit an exemption and why? What impact would exemptions have on people with hearing loss? What standard should the Commission utilize to determine if a technology or service should be exempted? Finally, how frequently should the Commission review such exemptions?

B. Fractional Deployment Benchmarks

13. In enacting the HAC Act, Congress found that individuals with hearing loss should have access to the telecommunications network “to the fullest extent made possible by technology and medical science.” Likewise, the CVAA directs the Commission to adopt rules that expand consumer access to hearing aid compatible handsets in line with advanced communication technologies. The Commission’s existing hearing aid compatibility rules, however, require covered handset manufacturers and service providers to achieve compliance only for a percentage of the total number of handset models that they offer. These fractional deployment benchmarks have been in place for a number of years and they have remained static, despite significant progress among certain manufacturers in achieving compliance. Moreover, the Wireless Bureau and CGB note the increasing trend among consumers to reside in wireless only households and rely exclusively on wireless services for communications. In such households, wireless handsets may be the only way for consumers to contact essential services, such as 911 emergency services. Given the evolution in wireless technology and handset manufacturing, and evolving consumer expectations and use, the Wireless Bureau and CGB seek comment on whether the current fractional deployment approach effectively meets the communication needs of people with hearing loss.

14. The Wireless Bureau and CGB renew the Commission's request for comment on how consumers with hearing loss would benefit if all newly manufactured handsets were hearing aid compatible – *i.e.*, have ratings of M3 and T3 or better. For example, to what extent would this improve the ability of consumers to select phones that meet their communication needs and reduce consumer confusion when shopping at retail establishments? To the extent that consumers currently have difficulty finding handsets that work effectively with their hearing aids or implants, would this change meaningfully address the difficulty? Or, by contrast, are consumers able to find hearing aid compatible devices (*i.e.*, devices with ratings of M3 and T3 or better) without difficulty, but are discovering that many devices do not work effectively with hearing aids or implants notwithstanding compliance with the Commission's rules?

15. To what extent would requiring compliance for all handsets make it easier for consumers with hearing loss to purchase handsets not just from manufacturers and service providers but from distributors, third-party vendors, kiosks, and websites? The Wireless Bureau and CGB note that, in the past, consumers have requested an in-store testing requirement for independent retailers. Would expanding the hearing aid compatibility requirement to all handsets render this request moot? Given the increasing number of wireless-only households, to what extent would this change improve access to emergency services for individuals with hearing loss? The Wireless Bureau and CGB seek comment on these issues and on other ways consumers with hearing loss could benefit if all future handsets were hearing aid compatible.

16. The Wireless Bureau and CGB also seek comment on challenges that may be associated with ensuring that all future handsets are compliant. Are there any technologies for which this would be technically infeasible? How much lead time would manufacturers need to achieve this, while ensuring the marketability and availability of their new technologies? Does the transition away from GSM and towards VoLTE remove some technological hurdles that slowed progress towards making all handsets

hearing aid compatible? Commenters advocating maintaining the existing benchmarks should clearly explain why their position is consistent with the HAC Act and the CVAA, and also why this decision would not adversely impact persons who are deaf or hard of hearing. Are there some wireless technologies for which the Commission should grant exemptions from an all-inclusive rule, because of their nascent status or for other reasons? Commenters advocating specific exemptions should clearly state the basis for any exemption, its expected impact on the affected population, whether it should be temporary or permanent, and if temporary, whether and how frequently it should be reevaluated by the Commission.

17. Finally, the Wireless Bureau and CGB seek comment on the costs and benefits associated with requiring all handsets to be hearing aid compatible. In particular, would this change eliminate the need for a number of the compliance requirements associated with the present fractional approach, such as annual status reports on hearing aid compatibility, the product refresh rule, and the “different levels of functionality” rule? What would be the advantages and disadvantages of discontinuing these requirements for manufacturers, service providers and consumers? Are there other compliance requirements that could be discontinued? Would the potential reduction in compliance burdens provide a particular benefit or cost to discrete segments of the industry, such as smaller wireless providers? Would smaller providers benefit from the availability of a wider variety of the latest handset models? The Wireless Bureau and CGB note that some manufacturers now deploy hearing aid compatible handsets in a higher percentage than is required under the rules. What economies of scale and other benefits would accrue to manufacturers who design all of their handsets to be hearing aid compatible? The Wireless Bureau and CGB generally seek comment on other ways covered handset manufacturers and service providers could benefit if all wireless handsets were hearing aid compatible, as well as any obstacles to achieving this result.

IV. PROCEDURAL MATTERS

18. Interested parties may file comments within 30 days of the publication of this document in the Federal Register and reply comments within 45 days of the publication of this Public Notice in the Federal Register. All filings should refer to WT Docket Nos. 07-250 and 10-254. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. If multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for email comments, filers should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

19. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

20. One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at FCC@BCPIWEB.COM or (202) 488-5563 (facsimile).

21. Copies of the document and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc. in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. The Public Notice and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Public Notice is also available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

22. To request information in accessible formats (computer diskettes, large print, audio

recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

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